

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

CAROLYN DEPHILLIPS, et al.,

v.

UNITED STATES OF AMERICA, et al.,

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Case No.: 8:09-cv-00905

MEMORANDUM

On July 20, 2009, Carolyn DePhillips, Richard Pelzer, and Richard DePhillips, Jr. (“Plaintiffs”) commenced this action by filing a complaint in this Court against the United States of America (“United States”), Tri-State Government Services Inc. (“Tri-State”), ECOFLO Inc., (“ECOFLO”), and James R. Fulk, Jr. (“Fulk”) for injuries allegedly sustained from exposure to chemical waste. On September 24, 2009, Defendant Tri-State asserted a Cross-Claim against Defendant Ecoflo seeking indemnification and contribution based on negligence and breach of contract. Now pending is Ecoflo’s Motion to Dismiss Tri-State’s Cross-Claim or, in the alternative, Motion for Summary Judgment. For the following reasons, I will deny Ecoflo’s Motion to Dismiss and Motion for Summary Judgment.

A motion to dismiss is appropriate where the Plaintiff can prove no set of facts that would entitle him to relief. *Herlihy v. Ply-Gem-Indus., Inc.*, F. Supp. 1282, 1285 (D. Md. 1990). Summary judgment is only appropriate where “there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *See* Fed. R. Civ. Pro. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

The grounds for dismissal or summary judgment are absent from the instant case. There are material questions of fact with respect to: 1) causation of the release of the chemical waste on Interstate 83; 2) the relative negligence of Ecoflo and Tri-State; and 3) the contractual relationship between Ecoflo and Tri-State. Therefore, Ecoflo's Motion to Dismiss or, in the alternative, Motion for Summary Judgment is denied. A separate order to that effect is being entered herewith.

DATE: 11/24/2009

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J. Frederick Motz

United States District Judge